IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.699 OF 2005

Madhav Subraya Shenoy & another Plaintiffs

versus

Madhukar Anant Vaity & 56 ors. Defendants

and

Deonar Industrial Premises
Co-op. Hsg. Society Ltd. through
Official Liquidator. Respondents

Mr.P.M.Havnur for plaintiffs.
Mr.Abhyankar for defendants 40, 53 and 54
Ms.Alpana Ghone with Ms.Payal Daftari and Ketki Furia i/by S.Satpute for defendants 41 to 51.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 22nd March 2006

PC :

1. This Chamber Summons is taken out by the plaintiff for amending the plaint in accordance with the schedule thereto.

2. The plaintiffs have filed present suit against defendants for a declaration that they are owners of the suit properties and that a decree be passed by this Court for dividing and/or partitioning them. It is contended that

plaintiffs are senior citizens residing at Mumbai. Defendants 1 to 39 are also residing at Mumbai and some of them are original owners and some of them are legal heirs and representatives of deceased original owners. It is, therefore, the case that the property is now sought to be developed and to the detriment of their right, title and interest therein, there are documents executed by the defendants and a reference thereto is made in the plaint.

3. It is now placed on record that there is a development on the property and the structure erected thereon is now being managed by Deonar Industrial Premises Co-operative Society which is respondent to this Chamber Summons and sought to be impleaded as proposed defendant. It is their case that the suit property is purportedly conveyed to the respondent. It is then pointed out that there are certain proceedings and it appears that the Co-operation Department through its Registrar had initiated liquidation proceedings of respondent and now Liquidator is appointed. A reference is made to certain observations of this Court in proceedings arising out of orders passed by the Co-operative Court and finally it is contended that necessary leave

under section 107 of the Maharashtra Co-operative Societies Act, 1960 has been obtained on 23rd March 2005. Therefore, Liquidator is also sought to be impleaded as representing the respondent society.

4. The Chamber Summons is opposed by some of the original defendants firstly on the ground that the leave under section 107 of the Maharashtra Co-operative Societies Act, 1960 should have been obtained prior to institution of the suit and the same obtained subsequently would not permit this Court in allowing the Chamber Summons and impleading the Liquidator as a party defendant to the suit. The second submission is that the plaintiffs are seeking to change the cause of action inasmuch as now a fraud is being pleaded by them. The submission is that a fraud was perpetrated on them is not the original cause of action and now that case is sought to be introduced by the proposed amendments.

5. The suit is filed for the relief of a declaration that plaintiffs are owners of the plot of land. They want the division and partition of the property. In the plaint itself, there is a reference to a criminal complaint

being made alleging offences amongst others of forgery under the Penal Code. It is specifically averred in paras 20 and 21 of the plaint that the defendants in conspiracy with each other have cheated and committed breach of trust of the plaintiff and have misappropriated their share. Thus, they have deprived them of their respective share in the property. In the light of this, introduction of present averments and more particularly paras 10A and 11A would not cause any prejudice to the defendants. They are aware of the pleas and controversy. They are not taken by surprise. There is no change of cause of action but only particulars pertaining to the fraud and forgery are being pleaded now. Thus, there is no substance in the contention that the proposed amendment changes nature of the cause of action pleaded in the suit.

6. The second contention is that permission to prosecute the suit cannot meet the requirements of law. In that behalf Ms.Ghone invites my attention to Section 107 of the Maharashtra Co-operative Societies Act, 1960 which reads thus:-

> "107. Bar of suit in winding up and dissolution matters :-
>
> Save as expressly provided in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act; and when a winding up order has been made no suit or other legal proceedings shall lie or be proceeded with against the society or the Liquidator, except by leave of the Registrar, and subject to such terms as he may impose;
>
> Provided that, where the winding up order is cancelled the provisions of this section shall cease to operate so far as the liability of the society and of the members thereof to be sued is concerned, but they shall continue to apply to the person who acted as Liquidator."

7. According to her, a plain reading of this provision indicates that permission/ leave should be obtained prior to the institution of the suit. More so, when in the light of the admitted factual position that a winding up order was passed before this suit was instituted.

8. In my view, that is not a proper reading of the said provision. All that the provision mandates is obtaining of the leave and from a perusal of the same it is clear that it can be obtained subsequently. Non obtaining of leave prior to institution of the suit, is not fatal. If any reference is necessary, then it would be

convenient to refer to a Division Bench decision of this Court reported in 2004(2)-Mh.L.J.-80 (State Bank of India Vs. Amravati Zilla Krishi Audyogik Sahakari Sangh Maryadit and others). This decision follows an earlier Division Bench Decision of this Court reported in 1992-Mh.L.J.-1239 (Vyas Bank Ltd. Vs. O/L of Shreenivas Cotton Textiles Company Ltd.. The provisions under consideration in both decisions are parimateria.

9. In the light of the above, the second objection to the maintainability of Chamber Summons and/or grant of relief in terms therein, does not survive. In the result, Chamber Summons made absolute in terms of prayer clauses (a) and (b). Amendment to be carried out within a period of two weeks. Copy of amended plaint to be served on the defendants as also Liquidator within two weeks thereafter. Plaintiffs to pay costs of this Chamber Summons quantified at Rs.1,500/- (Rs.Fifteen hundred only) to be paid to the defendants and Liquidator equally. On the plaint being amended and served, liberty is granted to file written statement/additional written statement within a period of eight weeks from the date of receipt of amended plaint. All

contentions of both sides on merits are expressly kept open.

(S.C.DHARMADHIKARI, J.)